

1 MICHAEL B. JACKSON (SBN 053808)

2 75 Court St.

3 Quincy, CA 95971

4 Phone: (530) 283-1007

5 mjatty@sbcglobal.net

6 Attorney for Protestants

7 California Sportfishing Protection Alliance

8 AquAlliance

9 California Water Impact Network

10 **BEFORE THE**

11 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

12 HEARING IN THE MATTER OF
13 CALIFORNIA DEPARTMENT OF WATER
14 RESOURCES AND UNITED STATES
15 BUREAU OF RECLAMATION
16 REQUEST FOR A CHANGE IN POINT OF
17 DIVERSION FOR CALIFORNIA WATER
18 FIX

19 **PROTESTANTS CSPA ET AL.
20 (AQUALLIANCE, CALIFORNIA
21 SPORTFISHING PROTECTION
22 ALLIANCE, AND CALIFORNIA WATER
23 IMPACT NETWORK) STATEMENT OF
24 ISSUES RECOMMENDED FOR
25 BRIEFING AT THE CLOSE OF PART 1**

26 Protestants CSPA et al. (AquAlliance, California Sportfishing Protection Alliance, and
27 California Water Impact Network) respectfully submit this statement of issues that CSPA et al.
28 recommend for briefing at the close of Part 1 of the hearings for the change in point of diversion
for California WaterFix.

Introduction: General statement regarding briefing procedure

CSPA et al. believe that best procedure for briefing on both Part 1 and Part 2 of the
WaterFix hearings would be to conduct all briefing at the close of Part 2, presuming Part 2 goes
forward. A single briefing would reduce the level of effort and redundancy, particularly in
arguing issues where there is overlap or an unclear dividing line between Part 1 and Part 2.

1 State Water Board should employ the broader legal concept of injury, such as economic injury,
2 to evaluate injury to legal users of water.

3 **III. Issue #3: Would export of groundwater through WaterFix facilities cause**
4 **injury to legal users of water?**

5 CSPA et al. presented testimony that transfers or other sale of groundwater would cause
6 injury to diverse classes of water users. In objections to testimony of CSPA et al., attorneys for
7 Petitioners argued that transfers are not part of the WaterFix project. Attorney for Petitioners
8 also sought to exclude as irrelevant testimony that the WaterFix project would enable and
9 incentivize the transfer or sale of groundwater. The Hearing Officers should allow Parties to
10 brief these issues.

11 **IV. Issue #4: Have the Petitioners sufficiently described project operations to**
12 **demonstrate that the WaterFix project if constructed and operated would not**
13 **cause injury to legal users of water?**

14 CSPA et al. and numerous other parties have presented testimony that Petitioners' project
15 description is insufficient to determine whether the WaterFix project if constructed and operated
16 would injure legal users of water. More specifically, CSPA et al. and other parties have
17 presented testimony that the evidence that Petitioners have presented concerning water quality,
18 reservoir operations, and adaptive management are insufficient to meet Petitioners burden of
19 demonstrating that that the WaterFix project if constructed would not injure legal users of water.
20 The Hearing Officers should allow Parties to brief these issues.

21 **V. Issue #5: Have the Petitioners met their burden of demonstrating that the**
22 **WaterFix project if constructed and operated would not cause injury to legal**
23 **users of water?**

24 CSPA et al. and numerous other parties have presented testimony that the WaterFix
25 project if constructed and operated would injure legal users of water. The Hearing Officers
26 should allow parties to brief this issue based on the evidence presented in Part 1 of this hearing.
27

1 **VI. Issue #6: Is the modeling conducted and presented by petitioners sufficient to**
2 **determine injury?**

3 CSPA et al. and other parties have presented testimony that the modeling used to support
4 Petitioners' testimony does not meet the test of best available science. CSPA et al. and other
5 parties have also presented testimony that the models employed by Petitioners are not designed
6 to determine injury and cannot be used for that purpose. The Hearing Officers should allow
7 parties to brief the adequacy of the models used by Petitioners in their case-in-chief.

8 **Conclusion**

9 CSPA et al. thank the Hearing Officers for the opportunity to present procedural and
10 substantive recommendations for briefing issues in Part 1 of the hearings on the California
11 WaterFix.

12
13 **Dated: 31 January 2017**

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17 For Michael B. Jackson
18 Attorney for Protestants CSPA et al.
19 (California Sportfishing Protection Alliance,
20 AquAlliance and California Water Impact
21 Network)

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STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation
(Petitioners)

I hereby certify that on 31 January 2017, I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document:

PROTESTANTS CSPA ET AL. (AQUALLIANCE, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, AND CALIFORNIA WATER IMPACT NETWORK) STATEMENT OF ISSUES RECOMMENDED FOR BRIEFING AT THE CLOSE OF PART 1

to be served by **Electronic Mail** (email) upon parties listed in Table 1 of the Current service List for the California WaterFix Petition hearing, dated 13 January 2017, posted by the State Water Resources Control Board at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/011317revsvlist.pdf

I certify that the foregoing is true and correct and that this document was executed on 31 January 2017.

Signature:



Name: Bill Jennings
Title: Executive Director, California Sportfishing Protection Alliance
Party/Affiliation: CSPA et al
Address: 3635 Rainer Avenue
Stockton, CA 95204